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No. 75-381

In the Supreme Court of the United States

OCTOBER TERM, 1975

JOE CHACON, JR., ET AL., PETITIONERS

v.

SAM GRANATA AND RANDOLPH AIR FORCE BASE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENT IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioners contend that the court of appeals erred in affirming the dismissal of their suit against Randolph Air Force Base on the ground that the suit was barred by sovereign immunity.

Petitioners, twenty owners of property that had been located near the City of San Antonio, Texas, initiated this action against the City, its City Manager, and Randolph Air Force Base, alleging that annexation by the City of their property was the first step in an unlawful scheme undertaken by the City and Randolph Air Force Base to deprive them of their property without just compensation through proposed

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zoning ordinances and eminent domain proceedings to be initiated after annexation depressed the value of their property.[1] They sought a permanent injunction against any further exercise of jurisdiction over the property in question by the City, a declaration that the annexation and proposed zoning ordinances are unconstitutional, and damages of two million dollars (Pet. App., pp. A–5 to A–7, A–14; 515 F. 2d 922, 923-924).

After considering the testimony of the City Manager of San Antonio, an Air Force Officer stationed at Randolph, and one of petitioners, the district court found that petitioners had failed to show any conspiracy between the Air Force and the City unconstitutionally to deprive petitioners of their property, and that "Randolph Air Force Base is a non-sueable [sic] entity of the United States Government and is, therefore, not a proper party to this cause of action" (Pet. App., p. A–18);[2] that petitioners had failed to establish prerequisites for the issuance of an injunction; that the City's annexation of the property in question was lawful and proper; and that petitioners' damage claims were premature since the anticipated zoning ordinances had been neither enacted nor applied to

[1] Petitioners now claim, for the first time, that they were damaged by overflights by Air Force planes. No such claim was made in either the district court or the court of appeals; therefore it is not properly before this Court.

[2] The court also noted that even if Randolph Air Force Base were subject to suit, the court had no jurisdiction to adjudicate a claim against the United States exceeding $10,000. See 28 U.S.C. 1346(a)(2).

petitioners' property (Pet. App., pp. A–18 to A–20). Accordingly, the court dismissed the action as to Randolph Air Force Base and dismissed the complaint with prejudice (Pet. App., pp. A–18, A–20 to A–21). The court of appeals affirmed (Pet. App., pp. A–5 to A–12; 515 F. 2d at 923–926).

Petitioners contend that the court of appeals erred in affirming the dismissal of their suit against Randolph Air Force Base. It is well established, however, that such suits are barred by sovereign immunity; Congress has not authorized suit or execution against a military base, which is an entity of the United States. See, *e.g., Blackmar* v. *Guerre,* 342 U.S. 512, 515.

The district court was in any event without jurisdiction to entertain petitioners' claim, which exceeded the maximum cognizable under 28 U.S.C. 1346(a)(2).

Moreover, petitioners failed to state a cause of action against the federal respondent; the annexation was undertaken solely by the City.[3] Petitioners do not allege, nor did they do so below, any act by the federal government that caused them injury.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

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[3] *United States* v. *Causby,* 328 U.S. 256, and *United States* v. *Dow,* 357 U.S. 17, upon which petitioners rely, both involved takings by the federal government and are therefore inapposite.

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